

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT LEE DANIELS,

Petitioner,

Case No. 1:13-cv-1141

v.

HON. ROBERT HOLMES BELL

JOHN PRELESNIK,

Respondent.

**MEMORANDUM OPINION AND
FINAL ORDER APPROVING AND ADOPTING
MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

This is a habeas corpus petition filed pursuant to 28 U.S.C. § 2254 . On December 23, 2013, Magistrate Judge Joseph G. Scoville issued a Report and Recommendation (“R&R”) (Dkt. No. 7) recommending that Petitioner’s habeas corpus petition be denied as time-barred, and that a certificate of appealability be denied. The matter is presently before the Court on Petitioner’s objections (Dkt. No. 8) to the Report and Recommendation. Also before the Court is Petitioner’s December 11, 2013, motion to appoint counsel (Dkt. No. 6). The objection does not take issue with the Magistrate Judge’s conclusion that the petition is time-barred, but rather reiterates the substantive bases of the Petitioner’s claims.

“[A] general objection to a magistrate’s report, which fails to specify the issues of contention, does not satisfy the requirement that an objection be filed. The objections must be clear enough to enable the district court to discern those issues that are dispositive and contentious.” *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). The Court therefore denies the objections and issues this

Memorandum Opinion and Final Order. *See* Rules Governing § 2254 Cases, Rule 11 (referring to the order disposing of a habeas petition as a “final order”).

The Court must further determine pursuant to 28 U.S.C. § 2253(c) whether to grant a certificate of appealability as to the issues raised. *See* Rules Governing § 2254 Cases, Rule 11 (requiring the district court to “issue or deny a certificate of appealability when it enters a final order”). The Court must review the issues individually. *Slack v. McDaniel*, 529 U.S. 473(2000); *Murphy v. Ohio*, 263 F.3d 466, 466–67 (6th Cir.2001).

Where, as here, the petition is rejected on procedural grounds without reaching the merits of the underlying claims, the Court should issue a certificate of appealability if “the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484. However, “[w]here a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further.” *Slack*, 529 U.S. at 484. Upon review, the Court finds that reasonable jurists would not find the Court’s procedural ruling debatable. A certificate of appealability will therefore be denied.

The Court will enter Judgment consistent with this Opinion and Final Order. Accordingly,

IT IS HEREBY ORDERED that Petitioner’s Objections (Dkt. No. 8) to the Report and Recommendation of the Magistrate Judge are **OVERRULED**.

IT IS FURTHER ORDERED that the December 23, 2013, Report and Recommendation of the Magistrate Judge (Dkt. No. 7) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Petitioner's petition for a writ of habeas corpus (Dkt. No. 1) is **DENIED**.

IT IS FURTHER ORDERED that a Certificate of Appealability is **DENIED**.

IT IS FURTHER ORDERED that Petitioner's motion to appoint counsel (Dkt. No. 6) is **DENIED** as **MOOT**.

Dated: January 15, 2014

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE